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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1974

No. 74-1122

BOARD OF EDUCATION OF JEFFERSON COUNTY, KENTUCKY and
ERNEST GRAYSON - - - - - Petitioners

versus

NEWBURG AREA COUNCIL, INC.,
SARAH WHITE,
JOHNIE WRIGHT and
SUZANNE POST - - - - - - Respondents

AND

BOARD OF EDUCATION OF LOUISVILLE KENTUCKY, and
BOARD OF EDUCATION OF JEFFERSON COUNTY, KENTUCKY - - - Petitioners

versus

JOHN E. HAYCRAFT and
HAZEL K. LANE - - - - - - Respondents

(Other parties respondent on inside cover)

APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

JOHN A. FULTON
WILL H. FULTON
1805 Kentucky Home Life Building
Louisville, Kentucky 40202
Counsel for Respondents, Jefferson County Board of Education

E. PRESTON YOUNG
722 Kentucky Home Life Building
Louisville, Kentucky 40202
Counsel for Petitioners, Jefferson County Board of Education

WESTERFIELD-BONTE CO., INC., 419 W. KENTUCKY, LOUISVILLE, KY.

Additional Respondents in Board of Education v. Newburg:

Lyman Johnson, Richard Miller, Aaron Howard, John R. Hughes, Theresa Black, John Schmidt, Earl Alluisi, and American Federation of Teachers

Additional Respondents in Board of Education of Jefferson County and Board of Education of Louisville versus Haycraft:

Lyman Johnson, Richard Miller, Aaron Howard, John R. Hughes, John Schmidt, Earl Alluisi, and Louisville and Jefferson County Federation of Teachers, Local 672, Newburg Area Council, Inc. and Kentucky Human Relations Commission.

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UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

JOHN E. HAYCRAFT, et al.

vs.

BOARD OF EDUCATION OF JEFFERSON CO., KY., et al.

} Civil Action No. 7291-G

AND

NEWBURG AREA COUNCIL, INC., et al.

vs.

BOARD OF EDUCATION OF JEFFERSON CO., KY., et al.

} Civil Action No. 7045-G

ORDER—Entered October 18, 1972.

This cause came on for a pre-trial conference as directed by the Court on September 6, 1972. The plaintiffs, John E. Haycraft and Hazel K. Lane, were represented by Robert A. Sedler, John G. O'Mara, Darrel T. Owens and Charles Lunderman. The Intervening Plaintiffs, Lyman Johnson, Richard Miller, Barbara Byrd, Aaron Howard, John R. Hughes, Teresa Black, John Schmidt and Earl Alluisi were represented by Thomas L. Hogan and Galen Martin. The Louisville and Jefferson County Federation of Teachers, Local 672, Second Intervening Plaintiffs, were represented by William Friedlander and James Webb. The Plaintiffs, Newburg Area Council, Inc., Mrs. Sarah White, Mrs. Johnie Mae Wright and Mrs. Suzanne Post, were represented by Robert A. Sedler, John G. O'Mara, and Thomas L. Hogan.

The Defendant, Board of Education of Jefferson County, Kentucky was represented by E. Preston Young, John A. Fulton, and William A. Blodgett. The Defendant, Louisville Board of Education was represented by Henry Triplett. The Defendant, Board of Education of Anchorage, Kentucky, was represented by J. Donald Dinning. There also appeared Fred Amis, Contenders of the Faith, Louisville Christian Civil League and Veterans Christian Union by their attorney, James T. Robertson, who tendered an Intervening Complaint and sought permission to file same. The Court having considered the record and the statements of counsel and being otherwise sufficiently advised,

IT IS ORDERED:

1. The Motion of Fred Amis, Contenders of the Faith, Louisville Christian Civic League and Veterans Christian Union to intervene as plaintiffs is DENIED. In the event these parties desire to do so, they are hereby authorized to file an amicus curiae brief urging any contentions which these parties seek to assert.

2. Civil Actions Nos. 7291-G and 7045-G are consolidated for the purpose of trial and the order of trial shall be that the plaintiffs shall introduce evidence relative to their claim against the Board of Education of Louisville, Kentucky, whereupon the Board of Education of Louisville, Kentucky, shall introduce such evidence as it deems desirable; and thereupon the plaintiffs shall introduce their evidence relative to the Board of Education of Jefferson County, Kentucky, following which the Board of Education of Jefferson County, Kentucky shall introduce its evidence.

3. With reference to the relief demanded in the various intervening complaints seeking a merger of the City and the County and the Anchorage School systems or some alternative relief involving consolidation or amalgamation of various school districts, the Court finds as a matter of law that it has no power or authority to cross political boundaries for the purpose of granting the relief sought in the

various intervening complaints. For the foregoing reasons, the Court is of the opinion that to the extent that such complaints or intervening complaints seek to require this Court to ignore political boundaries for the purpose of effecting integration of or racial balance in the various school systems, the complaints fail to state a claim for which relief may be granted. For the foregoing reason, all claims which are asserted against the Board of Education of Anchorage, Kentucky, are hereby DISMISSED.

4. This case is hereby assigned for trial to be conducted in the manner set forth in Paragraph 2 hereof beginning at 9:30 a.m. on December 1, 1972. At least fifteen days prior to the trial of the action, the parties will exchange the names of all witnesses that any party proposes to introduce unless discovery proceedings instituted by any of the parties require the names of witnesses to be divulged prior thereto, and counsel shall meet and review all exhibits and documents which any party intends to introduce no later than November 15, 1972; and unless objection thereto is made within five days thereafter, all such exhibits or documents as are reviewed by counsel will be admitted in evidence subject to competency and relevancy. The parties are urged to meet no later than November 15, 1972, for the purpose of entering into a formal stipulation of all facts that can be stipulated by counsel; and a stipulation of such facts as may be agreed upon will be filed as soon thereafter as possible, bearing the signatures of all counsel.

(s) James F. Gordon
United States District Judge

Dated: _____

Copies to: John A. Fulton
E. Preston Young
J. Donald Dinning
Henry A. Triplett
Darrel T. Owens
Robert Allen Sedler
Thomas L. Hogan
William Friedlander
James T. Robertson
Charles J. Lunderman
John G. O'Mara
Galen Martin

In the
UNITED STATES DISTRICT COURT
For the Western District of Kentucky
At Louisville

Civil Action No. 7291-G

JOHN E. HAYCRAFT AND HAZEL K. LANE, - - *Plaintiffs*

v.

BOARD OF EDUCATION OF LOUISVILLE, KENTUCKY, a body corporate, NEWMAN WALKER, Superintendent, Louisville Public Schools, BOARD of EDUCATION OF JEFFERSON COUNTY, KENTUCKY, a body corporate, and RICHARD VAN HOOSE, Superintendent, Jefferson County Public Schools, - - - - - - - *Defendants*

MEMORANDUM OPINION AND JUDGMENT—Entered March 8, 1973.

This action filed June 22, 1972, was tried to the Court on December 1-7, 1972. The Court has considered the voluminous testimony, the more than 130 exhibits, which were filed by agreement into the record, and upon the entire record herein now issues its Findings of Fact and Conclusions of Law and Judgment herein.

POSTURE OF THE LITIGATION

This is a school desegregation action[1] commenced by John E. Haycraft and Hazel K. Lane against the Board of Education of Louisville, Kentucky, the Board of Educa-

[1]Sponsored by the Kentucky Civil Liberties Union.

tion of Jefferson County, Kentucky, and their respective superintendents, seeking desegregation of the Louisville School District and demanding that the Court transfer so much of the Jefferson County School District as lies within the corporate limits of the City of Louisville into the Louisville School District.

By intervening complaint, Lyman Johnson, Richard Miller, Barbara Byrd, Aaron Howard, John R. Hughes, Teresa Black, John Schmidt and Earl Alluisi sue the Jefferson County Board of Education, the Board of Education of Louisville, the Anchorage, Kentucky Board of Education, and their respective superintendents, demanding complete desegregation of the three said school districts, and further that the Court order a merger of the three districts.[2]

A second intervening complaint was filed, sponsored by the American Federation of Teachers, a labor organization which claims it represents some of the teachers in all systems, demanding that the Court not arbitrarily assign teachers merely to achieve a balanced faculty.

Prior to the trial hereof, we entered certain threshold orders, to the effect that this Court lacked the judicial power to order a crossing of political boundaries as between the Jefferson County, Louisville and Anchorage School Districts, and, since the Anchorage School District (a very small school district located in the northeast portion of the county) was totally white, the Court, by final order with respect thereto, dismissed all proceedings against the Anchorage School District and its superintendent.

At the same time we directed separate trials, one immediately following the other, as to the status of each of the Louisville Independent School District and the Jefferson County School District.

Succinctness dictates an explanation at this point as to our reasoning behind the aforementioned threshold orders.

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[2]Sponsored by the Human Relations Commission and the NAACP.

First off, at that point in time (October, 1972), the prevailing law on the crossing of political boundaries in integration cases was as expressed in *Bradley* v. *School Board of the City of Richmond*, 462 F. 2d 1058. The Supreme Court of the United States had declined to advance that matter upon its docket. The Sixth Circuit had not spoken on the issue.

Though it has always been our personal judicial feeling that a situation might possibly be *envisioned*, wherein established discrimination was *so invidious* and *dejure* and further wherein the district court might be so *"locked in"* by existing political boundaries that its desegregation problem became *insusceptible of any solution other than* by the crossing of political boundary lines that such might become legally acceptable; however, an examination by us of the pleadings in the instant matter and our knowledge of the historical local situation did not support the possibility of proof of such a set of facts here, and, accordingly, we followed the Fourth Circuit rule. We believe our judgment in this regard was vindicated, for on trial date, in his opening statement, renowned counsel for the plaintiffs stated:

> "We are *not* contending here that schools are racially identifiable because of poor quality or because of substandard education. In Swann, the court indicated that those factors would be taken into account. We are proceeding in the supposition that the quality of black schools is substantially the same as the quality of white schools and that the same kind of program is offered. The *only problem* is that the schools are racially identifiable." (Emphasis ours.)

Further, we hasten to point out to our judicial superiors that in spite of the threshold orders, we allowed the plaintiffs in the trial of their case full latitude to develop any and all such proof, as they desired, relative to those facts

which they thought justified the necessity of crossing political boundaries or pointed in that direction. Such is in the record. This precaution was taken by us that the Appellate Court would have before it, fully developed, *all* of the facts at issue; that no remand for basic factual finding would be required, in the event that Court, on appeal, found our threshold position to have been legally unsound.

Additionally, it should be noted that there was simultaneously pending on our docket, and is disposed of by another of our Opinions this very day, Civil Action No. 7045, styled Newburg Area Council v. Board of Education of Jefferson County, and Louisville Independent School District. We tried both the instant Civil Action and Action No. 7045, one immediately following the other; first, all plaintiffs against the Louisville District and then all plaintiffs against Jefferson County Board of Education. This seemed the orderly way to handle the matter.

Likewise, some explanation of our disposition of the intervening complaint against the Anchorage School Board is deserved. In that matter we felt the dismissal of Anchorage as a defendant was required, that our ruling as to crossing political boundaries be consistent, but we took such action fully cognizant of the fact that after development of the proof before us we had the power, if deemed necessary, to order Anchorage again made a party and thus brought back before us. The Anchorage Independent School District has a total student enrollment of only some 300 pupils. Defense of this litigation by it (and as it turns out under our holding herein wholly unnecessary) would have caused serious financial problems to that small school district.

The Sixth Circuit, on December 8, 1972, in the *Bradley, et al.* v. *Milliken, Governor, et al.*, 72-1809 and 72-1814, spoke as to the crossing of political boundaries. It withdrew that opinion on January 14, 1973, and granted rehearing en banc. Therefore, we believe, in view of the unsettled legal state of affairs as to the boundary problem, by the development